

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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HOWARD GALE and RONA GILBERT, Docket No. 05 CV 2450 (GEL)

Plaintiffs, ECF Case

-against- JOINT PRE-TRIAL ORDER

SERVICE UNLIMITED,

Defendant.

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1. Plaintiffs are HOWARD GALE and RONA GILBERT; Defendant is SERVICE UNLIMITED.
2. Plaintiffs' counsel: STEPHEN R. KRAWITZ, LLC
271 Madison Avenue, Suite 200
New York, NY 10016
212-682-0707

Defendant's counsel: JOSEPH A. MARIA, P.C.
301 Old Tarrytown Road
White Plains, NY 10603
914-684-0333
3. This action is brought pursuant to 28 U.S.C. §1332 (1) based on diversity of citizenship. The plaintiffs are residents of the State of Connecticut; the defendant is a resident of the State of New York. The defendant does business in the State of Connecticut.
4. Plaintiff claims this is an action for negligence, property damage, breach of contract and fraud against Service Unlimited. Initially the plaintiffs received a brochure from Service Unlimited at their home advertising painting services. The brochure indicates Service Unlimited is, "fully insured and licensed." The parties entered into a contract dated June 17, 2004. The exterior of my clients' home is clear cedar clapboard. They wanted the surface powerwashed and then stained with a transparent stain.

The exterior of the premises was powerwashed without incident. On July 26, 2004, the date the job commenced, the workmen from Services Unlimited began applying the stain to the exterior of the house. As a result of the negligent, careless and reckless manner in which the work was performed, and the manner of the application of the transparent stain the cedar clapboard became discolored, mottled, streaked, blotchy and generally not uniform in color. As it was applied the stain was permitted to run down

the clapboard siding, and was applied in an uneven manner. The plaintiffs observed this happening and told the workmen from Service Unlimited to stop the work immediately.

Thereafter Service Unlimited re-powerwashed the exterior of the house to remove or ameliorate the discoloration; this was unsuccessful. A further attempt to scrub the affected areas with a solvent was also unsuccessful. The 'remedies,' offered by Service Unlimited to rectify the problem such as 'painting' or 'staining' the house a darker color do not adequately address the condition of the exterior of the plaintiffs' home.

The plaintiffs like the appearance of the clear cedar, which was a factor in the purchase of this particular house; it was also a factor in requesting a 'clear' stain to preserve the appearance of the natural cedar. The suggestion by Service Unlimited that they paint the house dark brown is unacceptable.

The plaintiffs sought the professional advise of several reputable painters, who, after a careful analysis of the premises and its present condition, recommend that the only way to obtain a uniform appearance, as existed PRIOR to Service Unlimited doing the work, would be to re-side the premises with new cedar siding. The painters consider that the cedar now on the home is ruined and cannot be re-habilitated save for an application of a dark colored stain, which is unacceptable to my clients.

Three sides of the house are visible from either the road or the driveway. In order for the exterior of the house to be restored to its original appearance, three sides of the house must be re-sided with new clear cedar clapboard. It is significant to this matter, and the subject of a fraud claim, that Service Unlimited is NOT INSURED for damages such as that caused to my clients' premises. Notwithstanding claims made in the initial brochure, there is no insurance coverage.

The plaintiffs have presented estimates for re-siding the premises on three sides. The estimates average approximately \$80,000. The plaintiffs contend that Service Unlimited's negligence was the proximate cause of the damage to their home.

5. Plaintiffs request a trial by jury. The trial should last approximately three days.
6. The parties have not consented to the trial of this action by a Magistrate Judge.
7. The parties agree that they entered into a contract for work to be performed on the plaintiffs' premises located at 25 Waters Edge Way, Ridgefield, CT.
8. Plaintiffs' witnesses: Rona Gilbert
Howard Gale
Mike Cizik, Painter
Carpenter, Cost of siding

All witnesses to testify in person.

9. No deposition testimony to be offered in case in chief.
10. Advertising Brochure
Contract
Photographs of premises marked at deposition

Dated: New York, NY
January 2, 2007

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